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<PREAMB>

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 14, 21, 26, 34, 35, 41, 133, 136, 160, 163, 164, 171, and 196

Docket ID OCC-2014-0006

RIN 1557-AD75

Integration of National Bank and Savings Association Regulations: Interagency Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is combining certain rules originally issued jointly with the other Federal banking agencies by the OCC with respect to national banks and by the former Office of Thrift Supervision (OTS) with respect to savings associations. Specifically, the OCC is combining rules relating to consumer protection in insurance sales, Bank Secrecy Act (BSA) compliance, management interlocks, appraisals, disclosure and reporting of Community Reinvestment Act (CRA)-related agreements, and the Fair Credit Reporting Act (FCRA). This rulemaking also makes technical amendments to the OCC's FCRA rule to conform to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act). This rulemaking will not result in any substantive changes in the combined rules. It will, however, streamline OCC rules, reduce duplication, and create efficiencies by establishing a single set of these rules for all entities supervised by the OCC.

DATES: This final rule is effective on [INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For additional information, contact Heidi Thomas, Special Counsel, or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, 202-649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597; Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the comprehensive package of financial regulatory reform measures included in the Dodd-Frank Act,¹ Title III of the Act transferred the powers, authorities, rights, and duties of the OTS to other Federal banking agencies, including the OCC. This transfer was effective on July 21, 2011. The Act abolished the OTS 90 days after the transfer date.

Title III transferred to the OCC all functions of the OTS and the Director of the OTS relating to Federal savings associations. As a result, the OCC is now responsible for the ongoing examination, supervision, and regulation of Federal savings associations, in addition to national banks and Federal branches and agencies.² The Dodd-Frank Act also transferred to the OCC the rulemaking authority of the OTS relating to all savings associations, both state and Federal.³

¹ Pub.L. 111-203, 124 Stat. 1376 (2010).

² Title III also transferred all functions of the OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC). It transferred all functions relating to the supervision of any savings and loan holding company and nondepository institution subsidiaries of such holding companies, as well as rulemaking authority for savings and loan holding companies, to the Board of Governors of the Federal Reserve System (Federal Reserve Board). Dodd-Frank Act, sections 312(b)(1) and (b)(2)(A) (savings and loan holding companies) and section 312(b)(2)(C) (state savings associations), codified at 12 U.S.C. 5412 (b)(1), (b)(2)(A), and (b)(2)(C).

³ Dodd-Frank Act, section 312(b)(2)(B)(i), codified at 12 U.S.C. 5412(b)(2)(B)(i). We note that the FDIC has identified a number of independent sources for exercising rulemaking authority for state savings associations in some cases.

On July 21, 2011, the OCC published a final rule that, among other things, revised OCC rules relating to key internal agency functions and operations to reflect the transfer of supervisory jurisdiction for Federal savings associations to the OCC. On this same date, the OCC issued an interim final rule and request for comments that restated and relocated the former OTS regulations to 12 CFR parts 100 through 197, with nomenclature and other technical changes.⁴ As a result, all OCC rules for both national banks and savings associations are located in Chapter 1 of Title 12 of the Code of Federal Regulations.

II. Overview of Integration Rulemakings

With a few exceptions, the OCC currently has one set of rules applicable to national banks and another set applicable to Federal savings associations or, where appropriate, to all savings associations.⁵ The OCC is now reviewing its rules to determine whether it is appropriate to integrate them into a single set of rules for both national banks and savings associations, where legally permissible and consistent with underlying statutes applicable to each type of institution.⁶ The key objectives of this review are to reduce regulatory duplication, promote

⁴ 76 FR 48950 (Aug. 9, 2011).

⁵ The following OCC regulations apply to both Federal and state savings associations: certain provisions in part 160 (lending and investment); certain provisions in part 163 (savings association operations); part 169 (proxies); part 190 (preemption of state usury laws); part 191 (preemption of state due-on-sale laws); part 192 (conversions from mutual to stock form); and part 195 (Community Reinvestment Act).

⁶ Concurrent with our integration of national bank and Federal savings association rules, the OCC also is reviewing OTS-issued supervisory policies to integrate them into the OCC's policy framework and to rescind any issuances that are duplicative, outdated, or replaced by other supervisory guidance. Our goal is to produce uniform policies for national banks and Federal savings associations, while recognizing differences anchored in statute. This policy review is occurring in conjunction with this integration rulemaking project. Many OTS-issued supervisory policies already have been integrated, rescinded, or replaced by new or existing OCC guidance. We will update this policy guidance, as appropriate, to reflect the integration of OCC rules as of the effective date of the final rules. Until that time, the Dodd-Frank Act provides that all such OTS issuances continue in effect until modified, terminated, set aside, or superseded. See Dodd-Frank Act section 316(b)(2), codified at 12 U.S.C. 5414(b)(2); OCC Bulletins 2011-47 (Dec. 11, 2011), 2012-2 (Jan. 06, 2012), 2012-3 (Jan. 06, 2012), 2012-15 (May 17, 2012), and

fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations, as well as for the OCC.⁷

Based on this review, the OCC plans to publish a series of rulemakings, each focused on a specific category or categories of bank and savings association regulations.⁸ This final rule is the first of these integration rulemakings and it addresses those rules that the OCC and the OTS adopted on an interagency basis with other Federal regulators.

III. Description of the Final Rule

This final rule amends the following OCC rules: consumer protection in sales of insurance (12 CFR parts 14, 136), procedures for monitoring BSA compliance (12 CFR part 21, subpart C, and 12 CFR 163.177), depository management interlocks (12 CFR parts 26, 196), appraisals (12 CFR part 34, subpart C, and part 164), disclosure and reporting of CRA-related agreements (12 CFR parts 35, 133), disposal of consumer information (12 CFR part 41, subpart I; and 12 CFR part 171, subpart I), and identity theft red flags (12 CFR part 41, subpart J, and 12 CFR part 171, subpart J). Each pair of bank and savings association rules is substantively

2013-34 (Nov. 20, 2013); and www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html.

⁷ We note that section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), 12 U.S.C. 3311, requires the OCC, FDIC, and Federal Reserve Board (the Agencies) and the Federal Financial Institutions Examination Council (FFIEC) to conduct a review of all their regulations to identify outdated, unnecessary, or unduly burdensome regulations at least once every 10 years. The FFIEC and the Agencies must complete their next review by December 31, 2016. To this end, the OCC, FDIC and Federal Reserve Board will issue joint notices requesting comments on their rules pursuant to EGRPRA over the next two years. The EGRPRA statute contemplates that the Agencies will initiate rulemakings, as appropriate, to change or eliminate outdated, unnecessary, or unduly burdensome rules based on the comments received. We plan to coordinate the publication of our integration proposals with the interagency EGRPRA review, such that final revisions to most OCC rules would consider both comments provided pursuant to the EGRPRA review and comments received pursuant to publication of OCC notices of proposed rulemakings.

⁸ This integration rulemaking project will not include rules relating to lending limits, capital, flood insurance, and safety and soundness standards. The OCC has addressed these rules in separate rulemakings. See 78 FR 37930 (June 25, 2013); 78 FR 62018 (Oct. 11, 2013), 78 FR 65108 (Oct. 30, 2013), and 79 FR 4282 (Jan. 27, 2014), respectively. It also will not include certain mutual thrift rules, which the OCC will review at a later date, if necessary.

identical. Therefore, their integration will have no substantive effect on banks and savings associations and this rulemaking serves only to simplify the OCC's rulebook.⁹

A detailed description of each amendment in this final rule is set forth below. A redesignation table that indicates changes in the numbering of the rules is included as Section VII of the preamble.

Consumer Protection in Sales of Insurance

Twelve CFR parts 14 and 136 establish consumer protection rules for the sale of insurance or annuities to a consumer by national banks and Federal savings associations, respectively, and their subsidiaries. The rules are nearly identical and contain no substantive differences. The OCC and OTS originally adopted these rules through an interagency rulemaking¹⁰ pursuant to section 305 of the Gramm-Leach-Bliley Act (GLBA),¹¹ and the OCC republished the OTS rule as part 136 with only nomenclature changes.¹²

The OCC is amending part 14 by adding language to make it applicable to both national banks and Federal savings associations. Specifically, the final rule amends the scope and purpose section of part 14 to include Federal savings associations by adding a definition of "Federal savings association" and inserting the term "Federal savings association" throughout the rule where necessary. The final rule also replaces the term "bank" with "national bank,"

⁹ Because these rules were issued on an interagency basis, the OCC would need to make any substantive changes to these rules through a joint rulemaking with the other issuing agencies. The Agencies will consider the need for substantive changes to these rules after the EGRPRA notice process is complete.

¹⁰ 65 FR 75822 (Dec. 4, 2000).

¹¹ Pub. L. 106-102 (Nov. 12, 1999), codified at 12 U.S.C. 1831x.

¹² 76 FR 48950 (Aug. 9, 2011).

where appropriate, to parallel the term “Federal savings association.” Finally, the final rule removes part 136.

Procedures for Monitoring BSA Compliance

Subpart C of 12 CFR part 21 (§ 21.21) and 12 CFR 163.177 require that national banks and savings associations establish and maintain procedures reasonably designed to assure and monitor compliance with BSA requirements. These provisions also establish minimum requirements for BSA compliance programs.¹³ The OCC and OTS originally adopted these rules through an interagency rulemaking¹⁴ and they are substantively the same. The OCC is amending subpart C to make it applicable to both national banks and savings associations and rescinding 12 CFR 163.177. Specifically, the final rule adds a definition of the term “savings association” and inserts this term throughout the rule, where appropriate.

Because there is no independent basis for the FDIC to exercise rulemaking authority for state savings associations with respect to implementing these BSA requirements, this final rule is applicable to both state and Federal savings associations. This rule also is applicable to Federal branches and agencies pursuant to 12 U.S.C. 3102(b) and 12 CFR 28.13(a). The FDIC will enforce this rule for state savings associations.

Depository Institutions Management Interlocks Act

Twelve CFR parts 26 and 196 implement the requirements of the Depository Institution Management Interlocks Act (Interlocks Act)¹⁵ for national banks and Federal savings

¹³ These rules implement the requirements of the BSA, as amended by section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

¹⁴ 68 FR 25090 (May 9, 2003).

¹⁵ 12 U.S.C. 3201 et seq.

associations, respectively. The rules are nearly identical and contain no substantive differences as the OCC and OTS originally adopted them through an interagency rulemaking.¹⁶

In order to consolidate our rules, the OCC is amending part 26 by adding language that makes it applicable to both national banks and Federal savings associations and removing part 196. Specifically, the final rule amends the authority section to include relevant statutory citations for Federal savings associations, amends the scope section to include Federal savings associations, and inserts the term “Federal savings association” in the rule where necessary.

In addition, the final rule amends § 26.4, which addresses interlocking relationships permitted by statute, to include: (1) any savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners’ Loan Act, as provided by section 205(9) of the Interlocks Act¹⁷ and (2) for a period of up to 10 years, an interlocking relationship in connection with an emergency acquisition of a Federal savings association, if the relationship is approved by the FDIC pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act (FDI Act), as amended.¹⁸ These two amendments implement statutory provisions that apply only to savings associations and that currently are included in part 196. Finally, the final rule amends § 26.2(j)(1)(vi) to correct an inaccurate citation and § 26.6(c) to correct a drafting error.

Both §§ 26.6 and 196.6 provide that the OCC may exempt an interlock from the prohibitions of the Interlocks Act if the OCC finds that the interlock would not result in a

¹⁶ 61 FR 40300 (Aug. 2, 1996).

¹⁷ 12 U.S.C. 3204(9).

¹⁸ 12 U.S.C. 1823(k)(1)(A)(v).

monopoly or substantial lessening of competition and would not present safety and soundness concerns. These sections also provide a rebuttable presumption that this test will be met if the depository organization seeking to add a management official is controlled or managed by persons who are members of a minority group or by women. A commenter on an earlier OCC-OTS integration rulemaking requested that we remove this presumption.¹⁹ The OCC notes that when the regulatory exceptions for these two categories of interlocks were created in 1979, the Federal banking agencies jointly found that the exceptions were appropriate for the promotion of competition over the long term and that they encouraged the development and preservation of these types of depository organizations, thereby contributing to the convenience and needs of the public and financial communities. As we stated in the preamble to our 1999 amendments to this rule,²⁰ permitting interlocks that improve the quality of management in minority- and women-owned institutions enables these institutions to better serve traditionally underserved customers and markets.

The OCC continues to believe that the exception for a depository organization controlled or managed by members of a minority group or by women does not create an unfair advantage but instead recognizes that it has historically been more difficult for institutions controlled by women and minorities to recruit seasoned management and that, accordingly, competition to serve traditionally underserved markets may have suffered. Therefore, the OCC does not support the removal of this rebuttable presumption.

Appraisals

¹⁹ 76 FR 48950 (Aug. 9, 2011). As indicated above, this interim final rule and request for comments restated the former OTS regulations as 12 CFR parts 100 through 197, with nomenclature and other technical changes.

²⁰ 64 FR 51673, at 51675 (Sept. 24, 1999).

Both 12 CFR part 34, subpart C, and 12 CFR part 164, subpart A, contain substantively similar provisions that: (1) address real estate-related financial transactions that require the services of an appraiser, (2) prescribe categories of transactions that either require an appraisal by a state certified appraiser or can be valued by a state licensed appraiser, and (3) prescribe minimum standards for the performance of a real estate appraisal in connection with a Federally related transaction entered into by an OCC-regulated institution. In order to consolidate national bank and Federal savings association rules, the OCC is applying part 34, subpart C, to Federal savings associations by amending § 34.41(a), the authority for subpart C, to include the relevant authority for both national banks and Federal savings associations. We also are removing 12 CFR part 164, including § 164.8, which addresses appraisal policies and practices of savings associations and subsidiaries and duplicates provisions in other OCC regulations and guidance.²¹ This final rule also makes other technical changes to clarify or update the rule. None of these revisions would result in any substantive changes to the appraisal requirements currently applicable to either national banks or Federal savings associations.²²

Disclosure and Reporting of CRA-Related Agreements

The CRA “sunshine” provisions of GLBA impose certain disclosure and reporting requirements with respect to CRA-related agreements entered into by an insured depository

²¹ See e.g., 2010 Interagency Appraisal and Evaluation Guidelines, OCC Bulletin 2010-42 (Dec. 10, 2010).

²² The OCC recently added subpart G to part 34 and subpart B to part 164 to implement the higher-priced loan appraisal requirements of section 1471 of the Dodd-Frank Act. See 78 FR 10368 (Feb. 13, 2013) and 78 FR 78520 (Dec. 25, 2013). The scope of subpart G of part 34 includes Federal savings associations, and part 164, subpart B, merely cross-references to part 34, subpart G. Therefore, subpart B of part 164 does not need to be integrated into part 34, and this interim final rule will remove all of part 164, both subparts A and B, from the OCC’s rulebook. In addition, we note that the OCC, along with a number of other agencies, has published a proposed rule to implement section 1473 of the Dodd-Frank Act that would add a new subpart H, Appraisal Management Company Minimum Requirements, to part 34. Subpart H, as proposed, relates to the registration and supervision of appraisal management companies by states and is not specific to national banks or Federal savings associations. 79 FR 19521 (Apr. 9, 2014).

institution or its affiliate with a non-governmental entity or person.²³ The law required each appropriate Federal banking agency to prescribe regulations implementing these CRA requirements. The appropriate Federal banking agencies, including the OCC and the OTS, satisfied this requirement by issuing joint, substantively identical regulations, which currently appear at 12 CFR part 35 for national banks and 12 CFR part 133 for Federal savings associations.²⁴ These rules differ from one another only with respect to their scope. Specifically, part 35 applies to national banks and their subsidiaries, while part 133 applies to Federal savings associations, their subsidiaries, and their affiliates.

In order to eliminate duplicative regulations, the OCC is removing part 133 and revising the scope provision of part 35 so that part 35 also applies to Federal savings associations and their subsidiaries. This scope provision is consistent with the scope of the CRA sunshine statute, which applies to insured depository institutions and their affiliates, including their subsidiaries.²⁵ The final rule does not carry over to part 35 the reference to Federal savings association affiliates in part 133 because the Dodd-Frank Act transferred authority over savings and loan holding companies and their non-depository institution subsidiaries to the Federal Reserve Board.²⁶ Affiliates of Federal savings associations therefore are subject to the Federal Reserve Board's substantively identical Regulation G.²⁷

²³ The statutory CRA 'sunshine' provisions are codified in the FDI Act at 12 U.S.C. 1831y.

²⁴ 66 FR 2052 (Jan. 10, 2001).

²⁵ For purposes of this CRA statute, the relevant definition of the term "affiliate" is the definition given in the FDI Act, which, by cross-reference to the Bank Holding Company Act, defines the term as "any company that controls, is controlled by, or is under common control with another company." See 12 U.S.C. 1813(w)(6), cross-referencing 12 U.S.C. 1841(k).

²⁶ Dodd-Frank Act, section 312(b), codified at 12 U.S.C. 5412(b).

²⁷ 12 CFR part 207.

The OCC also is amending the § 35.11(e) definition of “executive officer,” which is currently defined in both parts 35 and 133 by cross-reference to the Federal Reserve Board’s Regulation O.²⁸ The current Federal savings association regulation provides at § 133.11(e) that, for purposes of part 133, Regulation O’s use of the term “bank” shall mean “savings association.” Without this proviso, the cross-reference to Regulation O would be incompatible with part 133. The OCC is including similar proviso language in revised part 35, so that the cross-reference to Regulation O continues to be compatible with the rule as applied to Federal savings associations. The final rule also makes other minor or technical changes to part 35, including the correction of a citation at § 35.11(j)(2)(iv).

Fair Credit Reporting

Twelve CFR part 41, subparts I and J, contain the OCC’s national bank rules implementing the FCRA²⁹ and address the disposal of records containing consumer information and identity theft red flags. These provisions are substantively identical to the Federal savings association FCRA provisions at part 171, subparts I and J. In order to eliminate this redundancy, the OCC is applying part 41, subparts I and J, to both national banks and Federal savings associations and removing part 171.

We note that the Red Flag Program Clarification Act (RFPCA)³⁰ amended the definition of “creditor” for purposes of the Red Flag guidelines and regulations to clarify the scope of entities covered.³¹ To be consistent with current law, this final rule revises the definition of

²⁸ 12 CFR 215.2(e)(1).

²⁹ 15 U.S.C. 1681 et seq.

³⁰ Pub. L. 111-319 (Dec. 18, 2010).

³¹ 15 U.S.C. 1681m(e)(4).

“creditor” in the Red Flag guidelines, § 41.90(b)(5), to cross-reference the statutory definition as amended by the RFPCA. It makes no substantive amendment to the definition based on the RFPCA.

This final rule also amends part 41 to conform with section 1002(12)(F) of the Dodd-Frank Act, which, effective July 21, 2011, transferred to the Consumer Financial Protection Bureau (CFPB) the OCC’s FCRA rulemaking authority for the remaining provisions in part 41.³² The CFPB has issued rules implementing these FCRA provisions, with which both national banks and Federal savings associations now must comply.³³ Accordingly, the OCC is removing part 41, subpart C (affiliate marketing), subpart D (medical information), and subpart E (duties of furnishers of information), and § 41.82 (duties of users of consumer information regarding address discrepancies), as they are no longer in effect. In addition, we are amending part 41, subpart A, which contains general provisions that are no longer relevant in light of the transfer of the majority of the OCC’s FCRA implementation authority to the CFPB. Specifically, we are removing § 41.1, which states the scope of current part 41, and moving § 41.2, which explains the role of the examples provided in the rule, to subpart J, where the remaining examples themselves are located. In addition, the OCC is moving the definitions of “consumer” and “person” from § 41.3 to subparts I and J, respectively, where these terms are used. The remaining definitions in § 41.3 are applicable only to transferred FCRA provisions and therefore are removed.

³² The Dodd-Frank Act also transferred rulemaking authority for part 34, subpart F (registration of mortgage loan originators) and part 40 (privacy of consumer financial information) to the CFPB. We removed these rules from the OCC’s rulebook through a prior rulemaking. See 79 FR 15639 (Mar. 21, 2014).

³³ 12 CFR part 1022.

As a conforming change, the OCC is renaming subpart I and § 41.83 (the only section remaining in subpart I) to “Proper disposal of records containing consumer information” to more accurately reflect its content. In addition, the OCC is updating the cross-references in §§ 41.90(b)(5) and (b)(8) to reference CFPB rules, and making a technical change to a citation in Appendix J.

IV. Notice and Comment

Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Because this final rule integrates nearly identical rules applicable to national banks and Federal savings associations and does not make any material changes to these rules, the OCC finds that public notice and comment on this rulemaking is not necessary prior to its issuance.

Furthermore, the OCC finds that public notice and comment on the removal of certain FCRA provisions in 12 U.S.C. part 41 that transferred to the CFPB, and the resulting conforming changes to part 41, also are unnecessary. Because the Dodd-Frank Act transferred all Federal rulemaking for national banks for these FCRA provisions to the CFPB,³⁴ the existing OCC rules implementing these laws for national banks are no longer valid. These amendments are clerical in nature and will reduce any possible confusion that may result from having two sets of rules addressing these laws in the Code of Federal Regulations. In addition, we find that public notice and comment on the conforming amendment to the definition of “creditor” in § 41.90(b)(5) to

³⁴ See Dodd-Frank Act sections 1002 and 1022, codified at 12 U.S.C. 5481 and 5512.

reflect the new statutory definition³⁵ is unnecessary. This amendment is technical in nature as the statutory definition is now in effect and overrides the regulatory definition.

For these reasons, the OCC has good cause to conclude that advance notice and comment under the APA for this rulemaking are unnecessary.

V. Effective Date

This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) requires, subject to certain exceptions, that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule. This rule does not impose additional reporting, disclosure, or other requirements and therefore section 302 of this Act does not apply.

VI. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),³⁶ an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.³⁷

Pursuant to the APA at 5 U.S.C. 553(b)(B), general notice and an opportunity for public

³⁵ See Pub. L. 111-319.

³⁶ Pub. L. 96-354 (Sept. 19, 1980), codified at 5 U.S.C. 603.

³⁷ 5 U.S.C. 603(a), 604(a).

comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this final rule.³⁸

Unfunded Mandates Reform Act of 1995

Under the Unfunded Mandates Reform Act of 1995 (UMRA),³⁹ agencies consider whether a proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). If there is such a mandate, the agency prepares a budgetary impact statement, and also identifies and considers a reasonable number of regulatory alternatives before promulgating the rule. However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA at 5 U.S.C. 553(b). As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the UMRA does not apply to this

³⁸ We have concluded, however, that the final rule does not have “a significant economic impact on a substantial number of small entities” and thus, if the RFA did apply, a regulatory flexibility analysis would not be required.

³⁹ 2 U.S.C. 1532.

final rule. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.⁴⁰

Paperwork Reduction Act

This final rule amends several regulatory provisions that have currently approved collections of information under the Paperwork Reduction Act (PRA).⁴¹ The amendments adopted today do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that the Office of Management and Budget (OMB) has approved. Therefore, no PRA submissions to OMB are required regarding them, with the exception of removing obsolete citations.

VII. Redesignation Table

The following redesignation table is provided for reader reference. It lists the current savings association provision and identifies the provision in this final rule that would replace it.

Current Rule	Final Rule
Part 133	Part 35
Part 136	Part 14
§ 163.177	§ 21.21
Part 164	Part 34, subpart C
§ 164.1	§ 34.41
§ 164.2	§ 34.42
§ 164.3	§ 34.43
§ 164.4	§ 34.44

⁴⁰ We have, however, concluded that the final rule does not include a Federal mandate that meets the UMRA threshold and thus, if the UMRA did apply, a budgetary impact statement would not be required.

⁴¹ 44 U.S.C. 3501-3520; OMB Control Nos. 1557-0014; 1557-0180; 1557-0190; 1557-0219; 1557-0220; 1557-0230; 1557-0237; and 1557-0238.

Current Rule	Final Rule
§ 164.5	§ 34.45
§ 164.6	§ 34.46
§ 164.7	§ 34.47
§ 164.8	<u>See e.g.</u> , 2010 Interagency Appraisal and Evaluation Guidelines
§ 164, subpart B	Part 34, subpart G
Part 171, subpart I (§ 171.83)	§ 41.83
Part 171, subpart J (§ 171.90 – 171.92)	Part 41, subpart J
Part 196	Part 26
§ 196.1	§ 26.1
§ 196.2	§ 26.2
§ 196.3	§ 26.3
§ 196.4	§ 26.4
§ 196.5	§ 26.5
§ 196.6	§ 26.6
§ 196.7	§ 26.7
§ 196.8	§ 26.8
§ 196.9	§ 26.4(j)

List of Subjects

12 CFR Part 14

Banks, Banking, Consumer protection, Insurance, National banks, Reporting and recordkeeping requirements.

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 26

Antitrust, Holding companies.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 35

Community development, Credit, Freedom of information, Investments, National banks,
Reporting and recordkeeping requirements.

12 CFR Part 41

Banks, Banking, Consumer protection, National banks, Reporting, Recordkeeping
requirements. 12 CFR Part 133

Confidential business information, Freedom of information, Reporting and recordkeeping
requirements, Savings associations.

12 CFR Part 136

Consumer protection, Insurance, Reporting and recordkeeping requirements, Savings
associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflict of interests,
Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements,
Savings associations, Securities, Surety bonds.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and
recordkeeping requirements, Savings associations, Securities.

12 CFR Part 164

Appraisals, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 171

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 196

Antitrust, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

1. Revise the authority citation for part 14 to read as follows:

Authority: 12 U.S.C. 1 et seq., 24(Seventh), 92, 93a, 1462a, 1463, 1464, 1818, 1831x, and 5412(b)(2)(B).

2. Revise § 14.10 to read as follows:

§ 14.10 Purpose and scope.

(a) General rule. This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

- (1) Any national bank or Federal savings association; or
- (2) Any other person that is engaged in such activities at an office of the national bank or Federal savings association, or on behalf of the national bank or Federal savings association.

(b) Application to operating subsidiaries. For purposes of § 5.34(e)(3) of this chapter for national banks and § 159.3(h) of this chapter for Federal savings associations, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers

insurance products or annuities at an office of a national bank or Federal savings association, or on behalf of a national bank or Federal savings association.

3. Amend § 14.20 by:

a. Removing the word “or” in paragraph (f)(1)(i);

b. Redesignating paragraph (f)(1)(ii) as paragraph (f)(1)(iii) and by adding a new paragraph (f)(1)(ii);

c. Adding the phrase “or Federal savings association” after the word “bank” in newly designated paragraph (f)(1)(iii) and paragraphs (f)(2) and (i), wherever it appears; and

d. Redesignating paragraph (j) as paragraph (k) and by adding a new paragraph (j).

The additions read as follows:

§ 14.20 Definitions.

* * * * *

(f) * * *

(1) * * *

(ii) A Federal savings association; or

* * * * *

(j) Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464).

* * * * *

4. Amend § 14.30 by revising paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(1), (b)(3) introductory text, and (b)(3)(i) to read as follows:

§ 14.30 Prohibited practices.

(a) Anticoercion and antitying rules. A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) or section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank, Federal savings association, or any of their affiliates; or

* * * * *

(b) Prohibition on misrepresentations generally. A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank, Federal savings association, or a subsidiary of the bank or Federal savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank or Federal savings association is not backed by the Federal government, the bank, or the Federal savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC);

* * * * *

(3) In the case of a bank, Federal savings association, or subsidiary of the bank or Federal savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank, Federal savings association, or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank, Federal savings association, or a subsidiary of the bank or Federal savings association; and

* * * * *

5. Amend § 14.40 by:

- a. Revising paragraphs (a)(1) and (2), (b) introductory text, and (b)(1);
- b. In paragraph (c)(4)(i), removing the number “12” and adding in its place the number “15”;
- c. In paragraph (c)(5), fourth bullet, removing the phrase “BANK [OR” and adding “[BANK] [FEDERAL” in its place; and
- d. In paragraph (d), adding the phrase “or Federal savings association” at the end of the sentence.

The revisions read as follows:

§ 14.40 What a covered person must disclose.

(a) * * *

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank, Federal savings association, or an affiliate of the bank or Federal savings association;

(2) The insurance product or annuity is not insured by the FDIC or any other agency of the United States, the bank, Federal savings association, or (if applicable) an affiliate of the bank or Federal savings association; and

* * * * *

(b) Credit disclosure. In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, a covered person must disclose that the bank or Federal savings association may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank, Federal savings association, or any of their affiliates; or

* * * * *

§ 14.50 [Amended]

6. Amend § 14.50 by:

a. Adding the phrase “or Federal savings association” after the word “bank”, wherever it appears; and

b. In paragraph (a), adding the phrase “or Federal savings association’s” after the word “bank’s”.

§ 14.60 [Amended]

7. Amend § 14.60 by adding the phrase “or Federal savings association” after the word “bank”.

8. Revise appendix A to part 14 to read as follows:

Appendix A to Part 14—Consumer Grievance Process

Any consumer who believes that any bank, Federal savings association, or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank, Federal savings association or on behalf of the bank or Federal savings association has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613-6743, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-3031, or www.helpwithmybank.gov.

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

9. Revise the authority citation for part 21 to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

10. Amend § 21.21 by:

- a. In paragraph (a), adding the phrase “and savings associations” after the word “banks”;
- b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- c. Adding a new paragraph (b) to read as follows;
- d. In newly designated paragraphs (c)(1):
 - i. Removing the phrase “Each bank” and replacing it with the phrase “Each national bank and each savings association”;
 - ii. Removing the word “bank’s” and replacing it with the phrase “national bank’s or savings association’s”; and
 - iii. Removing the phrase “the bank” and replacing it with “the national bank or savings association”;
- e. In newly designated paragraphs (c)(2), removing the phrase “Each bank” and replacing it with the phrase “Each national bank and each savings association”; and
- f. In newly designated paragraph (d)(2), removing the word “bank” and replacing it with the phrase “national bank or savings association”.

The addition reads as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) Definition of savings association. For purposes of this subpart C, the term savings association means a savings association as defined in section 3 of the Federal Deposit Insurance Act (FDI Act), the deposits of which are insured by the Federal Deposit Insurance Corporation.

It includes a Federal savings association or Federal savings bank, chartered under section 5 of the FDI Act, or a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a state bank as defined in section 3(a)(2) of the FDI Act) organized and operating according to the laws of the state in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the FDI Act) that the Board of Directors of the Federal Deposit Insurance Corporation and the Comptroller jointly determine to be operating substantially in the same manner as a savings association.

* * * * *

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

11. Revise the authority citation for part 26 to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 3201–3208, 5412(b)(2)(B).

§ 26.1 [Amended]

12. Section 26.1 is amended:

a. In paragraph (a) by removing the phrase “in 12 U.S.C. 93a” and by replacing it with the phrase “for national banks in 12 U.S.C. 93a and Federal savings associations in 12 U.S.C. 1462a and 5412(b)(2)(B)”;

b. In paragraph (c) by adding the phrase “, Federal savings associations,” after the word “banks”.

§ 26.2 [Amended]

13. Section 26.2 is amended:

a. In the first sentence of paragraph (a)(2), by adding the phrase “or Federal savings association” after the word “bank”;

b. In the last sentence in paragraph (a)(2), by removing the phrase “group owns” and replacing it with “group, owns”; and

c. In paragraph (j)(1)(vi), by removing the phrase “paragraph (k)(1)” and replacing it with the phrase “paragraph (j)(1)”.

14. Section 26.4 is amended by adding paragraphs (i) and (j) to read as follows:

§ 26.4 Interlocking relationships permitted by statute.

* * * * *

(i) Any savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the HOLA, as provided by section 205(9) of the Interlocks Act (12 U.S.C. 3204(9)).

(j) A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with a Federal savings association for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

15. Section 26.6 is amended by revising paragraph (c) to read as follows:

§ 26.6 General exemption.

* * * * *

(c) Duration. (1) Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in either:

- (i) A monopoly or substantial lessening of competition; or
- (ii) An unsafe or unsound condition.

(2) If the OCC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

§ 26.8 [Amended]

16. Section 26.8 is amended by adding the phrase “, Federal savings associations,” after the word “banks” and by adding the phrase “or Federal savings association” after the word “bank”.

PART 34—REAL ESTATE LENDING AND APPRAISALS

17. Revise the authority citation for part 34 to read as follows:

Authority: 12 U.S.C. 1 et seq., 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 et seq., and 5412(b)(2)(B).

18. Amend § 34.41 by:

- a. Revising paragraph (a); and
- b. In paragraph (b) introductory text, adding the phrase “of FIRREA” after the phrase “Title XI”.

The revision reads as follows.

§ 34.41 Authority, purpose, and scope.

(a) Authority. This subpart is issued by the Office of the Comptroller of the Currency (the OCC) under 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1828(m), 5412(b)(2)(B), and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)), 12 U.S.C. 3331 et seq.

* * * * *

§ 34.42 [Amended]

19. Amend § 34.42 in paragraph (f)(1) by removing the word “institution” and adding in its place “institutions”.

§ 34.43 [Amended]

20. Amend § 34.43 by removing paragraph (f).

§ 34.44 [Amended]

21. Amend § 34.44, in paragraph (a), by removing the address “1029 Vermont Ave., NW., Washington, DC 20005” and adding in its place “(www.appraisalfoundation.org)”.

PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

22. Revise the authority citation for part 35 to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1831y, and 5412(b)(2)(B).

23. Section 35.1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 35.1 Purpose and scope of this part.

* * * * *

(b) Scope of this part. The provisions of this part apply to—

(1) A national bank and its subsidiaries;

(2) A Federal savings association and its subsidiaries; and

(3) Nongovernmental entities or persons (NGEPs) that enter into covered agreements with any entity listed in paragraphs (b)(1) or (b)(2) of this section.

(c) Relation to Community Reinvestment Act. This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 et seq.), part 25 (Community Reinvestment Act and Interstate Deposit Production Regulations) or part 195 (Community Reinvestment) of this chapter, or the OCC's interpretations or administration of that Act or these regulations.

* * * * *

24. Section 35.2 is amended by revising paragraphs (a)(2)(ii) and (a)(4) to read as follows:

§ 35.2 Definition of covered agreement.

(a) * * *

(2) * * *

(ii) One or more NGEPS.

* * * * *

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in § 35.4.

* * * * *

25. Section 35.11 is amended by:

a. Revising paragraph (e); and

b. In paragraph (j)(2)(iv), removing the phrase “paragraphs (i)(2)(i)” and adding in its place the phrase “paragraphs (j)(2)(i)”.

The revision reads as follows:

§ 35.11 Other definitions and rules of construction used in this part.

* * * * *

(e) Executive officer. The term “executive officer” has the same meaning as in § 215.2(e)(1) of Regulation O issued by the Board of Governors of the Federal Reserve System (12 CFR 215.2(e)(1)). In applying this definition under this part to a Federal savings association, the phrase “Federal savings association” shall be used in place of the term “bank.”

* * * * *

PART 41—FAIR CREDIT REPORTING

26. Revise the authority citation for part 41 to read as follows:

Authority: 12 U.S.C. 1 et seq., 24(Seventh), 93a, 1462a, 1463, 1464, 1818, 1828, 1831p-1, 1881-1884, and 5412(b)(2)(B); 15 U.S.C. 1681m, 1681s, 1681t, and 1681w.

Subparts A, C, D, and E [Removed and Reserved]

27. Remove and reserve subparts A, C, D, and E.

Subpart I—Proper Disposal of Records Containing Consumer Information

28. The heading for subpart I is revised as set forth above.

§ 41.82 [Removed and Reserved]

29. Remove and reserve § 41.82.

30. Revise § 41.83 to read as follows:

§ 41.83 Proper disposal of records containing consumer information.

(a) Definitions as used in this section. (1) Consumer means an individual.

(2) Federal savings association means a Federal savings association or an operating subsidiary of a Federal savings association.

(3) National bank means a national bank, an operating subsidiary of a national bank, or a Federal branch or agency of a foreign bank.

(b) In general. Each national bank or Federal savings association must properly dispose of any consumer information that it maintains or otherwise possesses in accordance with the Interagency Guidelines Establishing Information Security Standards, as set forth in Appendix B to 12 CFR part 30, to the extent that the bank or savings association is covered by the scope of the Guidelines.

(c) Rule of construction. Nothing in this section shall be construed to:

(1) Require a national bank or Federal savings association to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Subpart J—Identity Theft Red Flags

31. Amend § 41.90 by:

a. Revising paragraphs (a) and (b)(5) and (8);

b. Redesignating paragraphs (b)(9) and (10) as (b)(10) and (11); and

c. Adding a new paragraph (b)(9).

The revisions and addition read as follows:

§ 41.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) Scope. This section applies to a financial institution or creditor that is a national bank; a Federal savings association; a Federal branch or agency of a foreign bank; or an operating subsidiary of any of these institutions that is not a functionally regulated subsidiary within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b) * * *

(5) Creditor has the same meaning as in 15 U.S.C. 1681m(e)(4).

* * * * *

(8) Identity theft has the same meaning as in 12 CFR 1022.3(h).

(9) Person means any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

* * * * *

32. Amend § 41.91 by revising paragraph (a) and adding paragraph (b)(3) to read as follows:

§ 41.91 Duties of card issuers regarding changes of address.

(a) Scope. This section applies to an issuer of a debit or credit card (card issuer) that is a national bank; a Federal savings association; a Federal branch or agency of a foreign bank; or an operating subsidiary of any of these institutions that is not a functionally regulated subsidiary within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b)* * *

(3) Consumer means an individual.

* * * * *

33. Add § 41.92 to read as follows:

§ 41.92 Examples.

The examples in Appendix J and Supplement A to Appendix J are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this subpart. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this subpart.

Appendices C and E to Part 41 [Removed and Reserved]

34. Remove and reserve Appendixes C and E to part 41.

Appendix J to Part 41 [Amended]

35. Amend Appendix J to part 41 by:

a. In section III, paragraph (a), removing the phrase “(31 CFR 1020.220)”;

b. In item 3. of Supplement A to Appendix J, removing the phrase “as defined in § 41.82(b)” and adding in its place the phrase “as defined in 12 CFR 1022.82(b)”.

PART 133 [REMOVED]

36. Remove part 133.

PART 136 [REMOVED]

37. Remove part 136.

PART 160—LENDING AND INVESTMENT

38. Revise the authority citation for part 160 to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.60 [Amended]

39. In § 160.60, amend paragraph (c)(1)(i) by removing the phrase “part 164 of this chapter” and adding in its place “part 34, subpart C of this chapter”.

§ 160.172 [Amended]

40. Amend § 160.172 by removing the phrase “part 164 of this chapter” and adding in its place “part 34, subpart C of this chapter”.

PART 163—SAVINGS ASSOCIATIONS – OPERATIONS

41. Revise the authority citation for part 163 to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 et seq., 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.177 [Removed]

42. Remove § 163.177.

PART 164 [REMOVED]

43. Remove part 164.

PART 171 [REMOVED]

44. Remove part 171.

PART 196 [REMOVED]

45. Remove part 196.

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE ON INTEGRATION OF NATIONAL BANK AND SAVINGS ASSOCIATION REGULATIONS: INTERAGENCY RULES]

Date: May 13, 2014.

Thomas J. Curry,
Comptroller of the Currency.

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